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ARIZONA CORPORATION COMMISSION



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AZ CORP COMMISSION
BOB BURNS
Commissioner CONTROL

2017 JUN 20 P 12:44

Arizona Corporation Commission

DOCKETED

June 20, 2017

JUN 20 2017

RE: APS Rate Case Dockets No. E-01345A-16-0036, E-01345A-16-0123

DOCKETED BY
A blue ink signature, likely of Bob Burns, written over the "DOCKETED BY" text.

Dear Commissioners, Parties and Stakeholders:

I've had an opportunity to read what Commissioner Dunn has provided and I have two principal reactions. First, the Order has nothing to do with and misses the point entirely regarding the motions I have made. It is not an answer to the motions I have made in this meeting. I am entitled to a vote, up or down, on my motions.

Second, Commissioner Dunn's proposed order appears to mirror APS's talking points in their motions, and like APS's position it is filled throughout with factual inaccuracies and incorrect legal conclusions. My own briefing adequately exposes the factual and legal errors, and I will not repeat them all here. I will mention a few of the more glaring errors, however.

First, I take great exception to Commissioner Dunn's decision to borrow APS's false narrative and claim I am only seeking to protect the rights of parties to the rate case in seeking a full and objective investigation into relationships between APS and Pinnacle West election support, charitable and marketing efforts, and lobbying and the other Commissioners. I make no apology for being greatly concerned with the due process and other rights of parties to the rate case, of APS ratepayers, and of voters and citizens of Arizona in general. EVERY SINGLE COMMISSIONER should feel the same, and every one of us is duty-bound as elected officials with constitutional and statutory authority to not only respect but to protect the rights of parties to our rate cases, APS ratepayers, and all other Arizona citizens impacted by our actions or inactions. It is highly insulting to those who have elected us and those we are constitutionally bound to protect to say, as APS and Commissioner Dunn do, that we cannot legally protect the interests of Arizona ratepayers from improper or even illegal influence peddling by regulated monopolies especially when an individual who was recently indicted for bribery, etc. is connected to APS through press reports. I ask, and demand that my fellow Commissioners answer – "if not us, then who?" Commissioner Dunn's order answers, to APS's delight, "let them protect themselves if they can."

But there is far more here at issue than vindication of the rights of others. I also have rights, including constitutional and statutory rights that I have detailed and that the other Commissioners are well familiar with. Those include individual rights as an elected member of this Commission to conduct investigations into matters where I have even the mere suspicion that relevant evidence exists, and to do so through investigatory subpoenas and depositions. I also have an individual right as an elected member of this body to investigate the actions of my fellow Commissioners and their dealings with any regulated entity or its proxies and affiliates. Imagine, for example, the most egregious example possible - that I obtained a photo from an anonymous source of another Commissioner exchanging money with a proxy or representative for a regulated entity. Commissioner Dunn would leave it up to that Commissioner to decide whether he

or she should be investigated, and contends I have no legal interest in pursuing an investigation using the tools available to us. He concludes "Commissioner Burns lacks the standing necessary to disqualify or recuse his fellow Commissioners." That is preposterous and dangerous, and the aggressiveness with which Commissioner Dunn's proposed order rejects any thought that I have such an interest only fuels my reasonable beliefs that an investigation will likely yield substantial material evidence on the disqualification issue. I have individual rights that I am pursuing, including those rights associated with my elected office and my own due process rights as both a Commissioner and a citizen and voter in this state. I have more than enough "standing" to pursue all the relief I have sought.

I also note that Commissioner Dunn proposes that the Commission make a decision that nothing in all the requests APS and Pinnacle West and CEO Brandt refuse to comply with could possibly be relevant to the APS ratemaking proceeding. He is wrong; but he also uses the wrong legal standards and irresponsibly adopts assurances by the company we should be most suspicious of – APS – to prove his point. I respectfully submit that it is Commissioner Dunn who misunderstands how ratemaking really works – and especially because the most critical component of it – how APS and Pinnacle West coordinate to set their rate requests, and especially rate of return requests – was and remains entirely hidden. Unlike Commissioner Dunn, I believe that a regulated monopoly and its parent owe the ratepayers and this Commission full disclosure, not partial disclosure and unverifiable assurances.

Please also note that my objections to Commissioner Dunn's order extend to his many false factual assertions. Among the most inaccurate, however, is his assertion that I do not challenge the integrity of the Commission. It should be clear from my filings that I very much consider the integrity of the Commission and my fellow Commissioners subject to question, and in great danger. It is also alarming that Commissioner Dunn attributes comments to me that are old, would have been formed long before I became more educated in these matters, and are directly contradicted by the voluminous evidence and arguments I have submitted with my filings, including my filing seeking an investigation into disqualification of other Commissioners.

Commissioner Dunn also inaccurately states that "[n]one of the parties to the rate case have come forward to say there is insufficient facts to proceed with ratemaking." This is incorrect and I would encourage him to read ALL of the intervenors' comments, not just those from parties who signed onto APS's settlement agreement. Several parties in this rate case who opposed the settlement agreement do not believe there are sufficient facts to proceed with the rate case.

I am also troubled with why Commissioner Dunn has changed his opinion on what to do with APS's objections to coincide with APS's own shift from a judicial attack to a fight before the Commission. When Commissioner Dunn was running for this office, he stated in a Horizon debate on October 11, 2016: **"[T]his is why I support Commissioner Burns' subpoena because he had a right to do that and by doing that I knew very well that this would enter into the legal arena and now we have the courts there for the opportunity to resolve this in the future."** His proposed order contradicts these prior sentiments; though the only obvious change in circumstances is APS's and Pinnacle West's decision that they did not want these matters resolved in court.

Finally, I am troubled that Commissioner Dunn uses his purported expertise as a former judge and the inapplicable and factually unsupported legal tactics APS handed him with its briefing to shut down any investigation into his or others' interactions with APS and Pinnacle West when there has been no fact-

finding or disclosure on those points. I demand, once again, that before any of my fellow Commissioners join Commissioner Dunn to vote against any investigation into their disqualification that they state for the record each and every interaction or communication they or any person close to them or associated with their campaigns had with APS, Pinnacle West, or any proxy, consultant, lobbyist or other affiliate or associate of APS or Pinnacle West during their campaigns. This disclosure should include the relevant dates, times, and all matters discussed. They should also confirm whether any Commissioners who received any campaign funding through or with the help of Jim Norton or any other lobbyist or consultant for APS or Pinnacle West ever had any discussions with such person(s) about APS or Pinnacle West, and tell us all what any such discussions were. Finally, they should all disclose, on the record, when and how they first learned, or even suspected, that APS or Pinnacle West had provided funding to support their Corporation Commission campaign or to oppose a campaign of an opponent. For Commissioners with nothing to hide, such full disclosure should be no problem and would give the Arizona public confidence. If the Commissioners instead follow Commissioner Dunn's proposed path and seal off any such information, abundant reasons will exist to question their motives.

I was originally confused why APS was not present this morning to address any arguments in this case, but now realize their absence makes no difference. Their position is ably carried and protected by Commissioner Dunn's order. But just as APS and Pinnacle West are wrong in their objections, the proposed order is wrong.

I repeat my request that the Commissioners vote to approve my pending motions and reject Commissioner Dunn's proposed order in its entirety.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert L. Burns". The signature is fluid and cursive, with a large, stylized "B" at the end.

Robert L. Burns
Commissioner

On this 20th day of June, 2017, the foregoing document was filed with Docket Control as a Correspondence From Commissioner, and copies of the foregoing were mailed on behalf of Bob Burns, Commissioner - A.C.C. to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

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